



Agenda Date: 07/29/09
Agenda Item: IVA

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu

TELECOMMUNICATIONS

IN THE MATTER OF THE INDIRECT TRANSFER)
OF CONTROL OF NEXTG NETWORKS OF NY, INC.)
d/b/a NEXTG NETWORKS EAST)

ORDER OF APPROVAL

DOCKET NO. TM09050426

(SERVICE LIST ATTACHED)

BY THE BOARD:

On May 29, 2009, NextG Networks of NY, Inc. d/b/a NextG Networks East ("NextG-NY" or "Petitioner"), through its counsel and pursuant to N.J.S.A. 48:2-51.1, filed a notice with the Board of Public Utilities ("Board") regarding the consummation of a Merger Agreement and Plan whereby ownership and control of NextG-NY's parent corporation, NextG Networks, Inc. ("Parent"), will be transferred to Nodes Merger Corp. ("Nodes"), thus indirectly transferring control of NextG-NY. Upon consummation of the proposed transaction, NextG-NY will continue to operate in New Jersey and will continue to provide services to its existing customers in New Jersey pursuant to the existing rates, terms and conditions. Petitioner claims that under N.J.S.A. 48:2-51.1(b), Board review or approval is not required based upon the nature of the entities and the services they provide in the State. NextG-NY does, however, seek Board approval in the event the Board does not agree with its description of N.J.S.A. 48:2-51.1.

BACKGROUND

NextG-NY is a Delaware corporation and a wholly owned subsidiary of Parent, a Delaware corporation. Both NextG-NY and Parent have a principal business located in San Jose, California. Parent, through its subsidiaries, including NextG-NY, designs, builds, owns, operates, and manages Distributed Antenna System ("DAS") networks. NextG-NY provides Radio Frequency transport and backhaul telecommunications services primarily to commercial radio service providers. In New Jersey, NextG-NY was authorized to provide local exchange and interexchange telecommunications services. See Order I/M/O the Verified Petition of NextG Networks of NY, Inc. d/b/a NextG Networks East for Authority to Provide Local Exchange and Interexchange Telecommunications Services throughout the State of New Jersey, Docket No. TE04111434, dated February 1, 2005. NextG-NY is also authorized to provide intrastate telecommunications services in Connecticut, Delaware, Florida, Georgia, Indiana, Massachusetts, New York, North Carolina, Ohio, Pennsylvania, Puerto Rico, Rhode Island, and South Carolina. Furthermore, in New Jersey, NextG-NY was authorized to provide facilities-based and local exchange and interexchange telecommunications services. See Order, I/M/O the Verified Petition of NextG Networks of NY, Inc. d/b/a NextG Networks East for

Authority to Provide Local Exchange and Interexchange Telecommunications Services Throughout the State of New Jersey, Docket No. TE04111434, dated February 2, 2005.

Nodes Merger Corp. is a newly formed subsidiary of Madison Dearborn Partners, LLC ("Madison Dearborn") created solely for the purpose of effectuating this transaction. Nodes does not provide any telecommunications services. Madison Dearborn, based in Chicago, is a private equity investment firm. According to the petition, the principals of Madison Dearborn manage funds with the equivalent of \$18 billion in equity commitments.

DISCUSSION

According to the petition, Parent and Nodes have entered into a Merger Agreement and Plan ("Merger Agreement") as of May 15, 2009. The Merger Agreement contemplates the merger of Nodes into Parent, with Parent continuing as the surviving corporation (the "Transaction"). Following consummation of the Transaction, (1) the current stockholders of Parent will cease to own a majority of the outstanding shares of Parent's capital stock, (2) investment funds affiliated with Madison Dearborn will collectively own approximately 61% of the outstanding shares of Parent's capital stock, and (3) Accel Growth Fund L.P. and its affiliates ("Accel") will collectively own approximately 14% of the outstanding shares of Parent's capital stock. No other stockholder of parent will own 10% or more of the outstanding shares of Parent's capital stock. Petitioners state that following completion of the transaction, NextG-NY will continue to offer services at the same rates, terms and conditions, and as a result, Petitioners claim that the transfer will be transparent to customers. Further, Petitioner does not anticipate any change in management or operational personnel as a result of the Transaction.

Petitioner states that the proposed Transaction is in the public interest and that it will allow NextG-NY to obtain additional financial resources and therefore will allow NextG-NY to strengthen their competitive position in New Jersey to the benefit of New Jersey's consumers and the State's telecommunications marketplace. The Petition notes that currently NextG-NY has 4 employees in New Jersey and that none of these positions is expected to be eliminated as a result of the Transaction, and all retirement benefits currently available to these employees will be maintained.

FINDINGS AND CONCLUSIONS

N.J.S.A. 48:2-51.1 provides as follows: "No person shall acquire or seek to acquire control of a public utility directly or indirectly . . . without requesting and receiving the written approval of the Board of Public Utilities. Any agreement reached, or any other action taken, in violation of this act shall be void." That provision provides as follows with respect to the review by the Board: "In considering a request for approval of an acquisition of control, the board shall evaluate the impact of the acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates." The current merger standard is the positive benefits test. As per N.J.A.C. 14:1-5.14(c), positive benefits must result from the transaction in order for the Board to approve a merger. While acknowledging that NextG-NY asserts that this statute does not apply to this Transaction, the Board will nevertheless conduct its analysis based upon this framework.

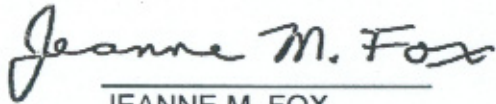
After a thorough review of the petition and all related documents, the Board concludes that there will be no negative impact on service quality to New Jersey customers or the rates they pay. Additionally, there will be no negative impact on competition. The operations of NextG-NY will

not be affected by this transaction and it will have no negative impact on employees. Moreover, a positive benefit may be expected from the strengthening of NextG-NY's competitive posture in the telecommunications market due to its access to additional resources.

Accordingly, after careful review of this matter, the Board FINDS that the change of control will have no material impact on the rates of current customers, or on employees. The Board also FINDS that the transfer will have no negative impact on the provision of safe, adequate and proper service, and may positively benefit competition. Therefore, after investigation, having considered the petition and exhibits submitted in this proceeding, the Board FINDS that the proposed transfer is in accordance with the law and is in the public interest. The Board HEREBY ORDERS that the Petitioners shall notify the Board of the closing of the proposed transactions within 7 days of the consummation of the Transaction. The Board FURTHER ORDERS that this approval will expire if the Transaction is not fully consummated on or before July 31, 2010.


DATED: 7/29/09

BOARD OF PUBLIC UTILITIES
BY:




JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

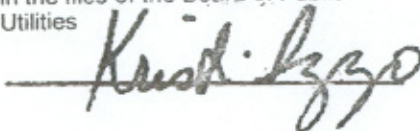

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



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